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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Lezmond Mitchell,
9 Petitioner,

10 vs.

11
12 United States of America,
13 Respondent.

) No. CV-09-8089-PCT-MHM
)
) DEATH PENALTY CASE
)

) **ORDER RE: MOTION TO DECLARE**
) **ATTORNEY-CLIENT PRIVILEGE**
) **WAIVED**
)
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16 Respondent has filed a motion requesting that the Court declare Petitioner's attorney-
17 client privilege waived. (Dkt. 29.) The motion asserts that Petitioner's trial counsel will not
18 consent to an informal interview by Respondent – for the purpose of investigating
19 Petitioner's allegations of counsel ineffectiveness – without a written waiver from Petitioner
20 or order of the Court. (*Id.* at 2.) The motion further states that Petitioner will not provide a
21 written waiver. (*Id.*)

22 Courts have uniformly held that a claim alleging ineffective assistance of counsel
23 waives the attorney-client privilege, at least within the scope of the issues raised by the claim.
24 *See In re Lott*, 424 F.3d 446, 452-53 (6th Cir. 2005); *Bittaker v. Woodford*, 331 F.3d 715,
25 718-19 (9th Cir. 2003); *Johnson v. Alabama*, 256 F.3d 1156, 1178 (11th Cir. 2001); *United*
26 *States v. Ballard*, 779 F.2d 287, 292 (5th Cir. 1986). The inquiry required by *Strickland v.*
27 *Washington*, 466 U.S. 668, 669 (1984), presupposes that the Government will be given a fair
28 opportunity to defend against Petitioner's claims alleging ineffective assistance of counsel.

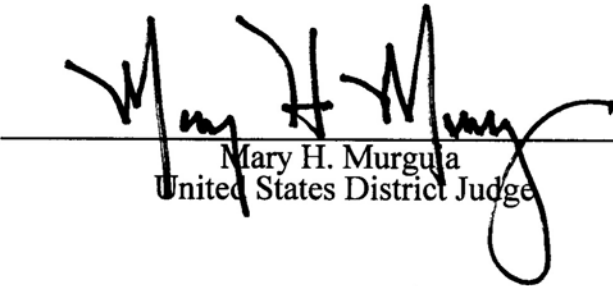
1 *Bittaker*, 331 F.3d at 720. Therefore, if any of Petitioner's prior attorneys are unwilling to
2 participate in informal interviews with the Government or the Government would prefer to
3 depose these individuals, the Court finds good cause under Rule 6 of the Rules Governing
4 Section 2255 Cases for such depositions.

5 Based on the foregoing,

6 **IT IS ORDERED** that Respondent's Motion to Declare Attorney-Client Privilege
7 Waived (Dkt. 29) is **GRANTED**.

8 DATED this 3rd day of December, 2009.

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Mary H. Murgula
United States District Judge